SERVED: May 21, 1999

NTSB Order No. EM-184

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 17th day of May, 1999

JAMES M. LOY, Commandant, United States Coast Guard, v. SCOTT R. GREEN, Appellant.	Docket ME-165

OPINION AND ORDER

Appellant challenges a July 21, 1997 decision of the Vice Commandant (Appeal No. 2586) affirming a four-month suspension of his merchant mariner's license (No. 625896), as ordered by Coast Guard Administrative Law Judge Michael E. Hanrahan on March 13, 1995.[1] The law judge sustained a charge of negligence in connection with a grounding that occurred during appellant's service as master aboard a towing vessel that was pushing an oil-laden tank barge in the Intracoastal Waterway (ICW) on September

[1]Copies of the decisions of the Vice Commandant (acting by delegation) and the law judge are attached.

23, 1993.[2] The Coast Guard charged, in effect, that the grounding, near North Miami, Florida, was the result of appellant's negligent failure to heed relevant, published navigation information concerning the area in which, according to the appellant, the "starboard stern skeg [of the tug] fetched up on a limerock ledge."[3] We affirm the Vice Commandant's decision to sustain the charge of negligence.[4]

The information the Coast Guard believes the appellant did not adequately take into consideration before attempting to transit the ICW near Baker's Haulover, Biscayne Bay, Miami, Florida, appeared in the August 17, 1993 issue of the Coast Guard's Local Notice to Mariners No. 33-93 ("LNTM"). That publication stated, in relevant part, as follows:

> FLORIDA—-INTRACOASTAL WATERWAY-—WEST PALM BEACH-MIAMI: Shoaling.
>
> Severe shoaling exists in the Intracoastal Waterway at Bakers Haulover. Biscayne Bay Light 7... is in three feet of water. The Intracoastal Waterway is within approximately 30 feet of being entirely closed. The U.S. Army Corps of Engineers advises that dredging operations are scheduled for the fall.

From the record in this case it would appear that, prior to this LNTM, those navigating this stretch of the waterway would treat

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[2]Appellant's assignment was to transport the oil from the Port of North Miami, Florida, to Port Everglades, Florida.

[3]Testimony of Scott R. Green, September 2, 1994 Hearing Transcript, at p. 61.

[4]Appellant's request for oral argument is denied. The existing record provides an adequate basis for resolving the issues he has raised in his appeal.

Light 7[5] as marking the beginning of the shoal along the right side of the channel (when heading north in the ICW), such that it could be assumed that the channel, with a controlling depth of 8.5 feet, would lie, essentially, immediately to the left, or west, of the light. At the time the August 17 LNTM was issued, however, the shoaling actually extended some 23 feet to the west beyond the channel. Appellant maintains, essentially, that without this latter piece of information the LNTM did not set forth circumstances which would have kept a prudent mariner from making the voyage he unsuccessfully attempted. We find no error in the Coast Guard's contrary conclusion. While it might have been useful for the LNTM to indicate where the channel began, or, conversely, where the shoaling on the eastern side of the ICW ended, relative to Light 7, it was clear from the notice that the channel was no longer immediately to the left of the light, since it was "in three feet of water," rather than, as apparently had been the case, some 8.5 feet, like the channel itself.

We have no need to determine whether the Coast Guard's LNTM should or could have been more informative than it was, for, in our opinion, it, as issued, amply established the low prospects for success that a tug and tow such as those involved in this matter faced if a transit of Baker's Haulover were undertaken. The question, in other words, is not whether the grounding might have been avoided if the appellant had been given additional information about the parameters of the shoaling in this section

[5]Also referred to in the record as Temporary Marker Buoy 7A.

of the ICW. It is, rather, whether appellant could reasonably conclude, based on the information on the waterway available to him, that a transit of the area could be accomplished without undue risk of misadventure. The answer to that inquiry is an unequivocal "no."

The M/V COASTAL CANAVERAL is an 80-gross-ton tug that is some 54.5 feet long and 20 feet wide, with a 6.5 foot draft. The barge it was pushing, the T/B COASTAL, with a 4.5 foot draft, is 40 feet wide and 180 feet long.[6] Because the barge was 10 feet wider than the channel, where the deeper-draft tug, made up to center stern of the barge, had to remain, the water depth along both sides of the channel had to be more than 4.5 feet. Appellant appears to have thought that this would not be a problem if he kept the starboard side of the barge close to Light 7, since he knew, from the LNTM that it (about a month earlier) was "in three feet of water" and the tide at the estimated time of his passing should give him another foot and a half.[7] Appellant in effect maintained that his effort to navigate his 234.5-foot-long flotilla in this fashion past the light shows that he took adequate care, in view of the information available to him, including the LNTM, to mitigate the risk of a grounding, though he did not explain his willingness to try to push the

[6]At the time of the grounding, the barge was loaded with 450 metric tons of No. 6 oil.

[7]It also appears, for reasons that are by no means certain from this record, that the appellant believed that the depth over the rock-lined port side of the channel would be comparable to the depth to be encountered near Light 7.

barge through an area where its draft would equal the predicted water depth.[8] Like the Coast Guard, we do not think that the LNTM was properly taken into account.

Given the obvious importance to appellant of knowing with precision where his 20-foot-wide tug would have at least 6.5 feet of water, and in light of the fact that the LNTM did not specify the location of the roughly 30 feet or so of channel remaining within the ICW, we fail to understand how the appellant could have reasonably assumed that the tug would pass through the channel so long as the barge passed close to the light. Such an assumption does not appear to have been based on or justified by any information appellant acquired to supplement the LNTM, and it is not consistent with the LNTM's explicit advice as to the mean water level (three feet) at appellant's point of reference (i.e., Light 7).[9] It seems to us in these circumstances that appellant's failure to heed the LNTM was but part of the broader carelessness he exhibited by attempting a transit for which he did not have sufficient information to perform with any reasonable likelihood of success. That his towing vessel grounded was a predictable consequence both of his decision to navigate the waterway when he lacked proper preparation and his willingness to operate the vessel without ensuring even a minimal

[8]Appellant would also have to contend with a l.5 knot ebb current setting his 234-foot-long flotilla toward the shoal.

[9]We note in this connection that appellant chose to navigate the area prior to sunrise, thus limiting his ability to visually assess the positioning of the channel as he approached Light 7.

margin for navigational error. His conduct did not reflect prudent seamanship.

Appellant's objections to the sanction imposed by the administrative law judge are also without merit and, save one point, warrant no comment.[10] Specifically, appellant has not produced authority for the proposition that the law judge could not order a suspension for appellant's proved negligence because the Coast Guard, prior to preferring the charge against him, apparently would have pursued the matter no further had he accepted a warning letter. We perceive no reason to disagree with the Vice Commandant's view that the Coast Guard's pre-charge efforts to resolve without a hearing a suspected lapse in a mariner's exercise of the privileges of his license should have no bearing on the law judge's post-hearing discretion to order an appropriate sanction.[11] Absent some showing, not attempted here, that the suspension ordered could not be reconciled with the

[10]In addition, appellant suggests that the suspension ordered by the law judge should be reduced or eliminated because, among other claimed undue, and largely unexplained, burdens he asserts this matter has occasioned him, he has had to obtain temporary licenses to continue to sail while his appeal to the Vice Commandant was pending. Appellant also complains that the more than two years that the Vice Commandant took to decide the appeal undermines the deterrent value of a suspension. We do not believe that these factors justify any effort by the Safety Board to second-guess the Coast Guard as to the utility of a sanction that has not been shown to be inconsistent with precedent.

[11]Similarly, it is not relevant here that others who may have grounded vessels in the same area of the ICW after appellant's incident may have received, instead of a suspension, no more than personal counseling or may have been exonerated in investigations that, for whatever reasons (including, perhaps, an admission or concession of faulty judgment by an operator), did not produce formal charges to be litigated at a hearing.

range of average sanctions imposed for proven negligence in similar cases, the claim of excessive punishment cannot be maintained.

ACCORDINGLY, IT IS ORDERED THAT:

1. The appellant’s appeal is denied; and

2. The decisions of the Vice Commandant and the law judge imposing a four-month suspension of appellant’s mariner’s license are affirmed.

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.